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6

Aesthetic Play: Between Performance and Justice

Ananda Breed

Introduction

This chapter explores the aesthetic interplay between juridical performances connected to due processes of law, alongside varied narratives of justice and reconciliation. I argue that in the case of post-genocide Rwanda's *gacaca* courts, the aesthetic frame of justice was used to perform international norms and to provide legibility to the local level courts, but that the actual courts themselves were eventually manipulated for purposes ranging from revenge to extortion.[1] I explore how the *gacaca* courts were implemented on a cell-to-cell level between 2005 and 2012, by first illustrating the notion of protection through international legalisms creating juridical subjects, then how these norms were performed through the 'fictional frame' of *gacaca*, navigating between the performance of the *gacaca* courts themselves and narratives that emerged outside the predetermined government script. I use the term script loosely as a 'dramaturgical blueprint' for modes of justice and reconciliation that were to be performed post-genocide.[2] For this analysis, I present two case studies of *gacaca* court sessions that I attended between the initial data collection courts from 2004 to the culmination of the courts in 2012: one from an initial *gacaca* court in the Eastern Province of Rwanda in 2005, and the other from an appeal level *gacaca* court in Kigali in 2010. I analyse how *gacaca* was used to reimagine an indigenous mediation system, followed by the use of *gacaca* as a 'fictional frame' as it was manipulated for other

purposes. In this way, there are several layers of protection being explored – from the state level execution of Rwandanicity and *gacaca* to protect the Rwandan Patriotic Front (RPF) and ostensibly to prevent the occurrence of another genocide – to how systems of protection can also be used offensively to oppress versus to liberate.

I make the argument that state constructed scripts and the formation of *gacaca* – as a performance that rewrites the history of Rwanda from the vantage point of the genocide, is emblematic of the historic use of performance to record the Tutsi version of history through practices such as performances by actors or '*abiru*' during the Tutsi aristocracy and the use of performance by Tutsi artists-in-exile while in refuge, between 1959 and 1994. Tutsi artists-in-exile, such as Jean-Marie Kayishema and Kalisa Rugano, sought to use performance as a mode of cultural survival, both to preserve Tutsi culture in the countries of refuge and to fuel a militaristic return to Rwanda. In this case, theatre is used to protect a culture from annihilation and as preparation for war at the same time. The same construction of theatre as protection has been used on a national scale alongside international legalisms or speech talk to protect the current RPF and Tutsi-dominated government.[3]

Bert Ingelaere examines *gacaca* through concepts including numerical legibility, magic syllogisms and speech performances. He uses these terms to describe the strategy of *gacaca* advocates and the RPF to 'mask the absence of the actual and profound reference reality of the representation in question' based on numerical descriptions of *gacaca* or 'primarily based on law or law talk'.[4] I build the case that the noted 'magic syllogisms and speech performances' are characteristic of the historic use of theatre by the ruling RPF to maintain a dynastic past and that the *gacaca* serves as a 'fictional frame', another kind of theatre to perform justice and reconciliation at one level, but additionally to embed the RPF version of history to serve as victor's justice for the time period between 1990 and 1994 (the civil war leading up to the genocide against Tutsi in 1994) and to promote Rwanda as the poster-child for transitional justice systems. These varied performances may serve to protect, but simultaneously, these national performances may put individuals and the nation at risk.

In Chapter 1 of this volume, Gareth White notes how he will map ways in which questions concerning aesthetics take shape and attempts to present alternative ways to form questions for the purpose of interpreting these situations. For the benefit of this chapter, I would use his phrase as a question: How do questions take shape in conventional aesthetics, and how are they reshaped by applied theatre situations? Within the context of conflict and genocide and the literal destruction and reconstruction of cultural identity, bodies carry with them cultural histories and forms that contain political narratives. These bodies can continue to propagate identities under threat or to subvert narratives in opposition, as is often the case concerning ethnic conflict. The gacaca courts could not be considered applied theatre, but the fact that the courts were implemented on a mass scale involving every Rwandan citizen by law to attend the local level courts from 2004 to their culmination, evidences a different kind of participatory practice linked to the use of participatory art practices through sensitization and mobilization campaigns as part of the reconstruction of post-genocide Rwanda.

Gacaca as a performative

The mass exodus of Tutsi to neighbouring countries during periods of genocidal attacks, particularly after the Hutu revolution of 1959 in which power switched from the Tutsi to the Hutu, exposed them to the plight of exilic conditions in their host countries including Burundi, Uganda, and the Democratic Republic of Congo (DRC). In order to combat psychological and material loss exiled Rwandans sought to rediscover cultural identity through an artistic journey from a narrative of loss to a narrative of recovery. However, there is an agonistic tension between the use of the arts for creation and protection. Herbert Marcuse states in this regard, 'that aesthetic sublimation both has an affirmative character' (making suffering acceptable) *and* is simultaneously 'a vehicle for the critical, negating function of art. Art stands as reconciling other *and* rebellious subjectivity, at the same time.'[5] Marcuse notes that 'art does not change reality, but is another reality, and as such is always inherently revolutionary.'[6] The aesthetic form contains the political potential in art. Thus, art allows for another kind of dramaturgical blueprint in which scripts are imagined, recorded and eventually enacted.

The staging between these agonistic tensions is present within the reinvention of Rwandan traditions following the victory of the RPF who stopped the 1994 genocide, in which 1 million Tutsi and Hutu moderates were killed within a period of 3 months. One mode of staging the RPF version of history and to instil justice was the reinvention of the *gacaca* courts used to try the perpetrators of the genocide. Although touted as a 'traditional' practice, national theatre tours and sensitization campaigns used theatre to educate the masses about a practice that the majority of Rwandans had never heard of nor witnessed. In the aftermath of the genocide, the Government of National Unity was faced with enormous moral, legal and administrative challenges. At the request of the Rwandan government, the UN created the International Criminal Tribunal for Rwanda (ICTR) on 8 November 1994 to try high-level planners of the genocide but because of the extensive amount of time and money allotted for each case and the distance of the ICTR (in Tanzania) from Rwanda, there has been controversy concerning its effectiveness. To speed up the trials in classic courts in Rwanda and to lessen the load on the overburdened prisons, and to engage the active participation of Rwandans towards 'truth seeking' and 'fighting against impunity', the government sought a local solution that resulted in the establishment of gacaca courts.[7] *Gacaca* served as:

> A performative event in that rwandanicity was inculcated on a cell to district level and reinforced through the repeated portrayal of state power and the enactment of a 'moral community' in performances of justice, forgiveness and reconciliation. . . . Rwandanicity was inculcated both through the fictional staged renditions of *gacaca* courts and the real *gacaca* court proceedings . . . [t]he courtroom itself stages certain roles and scripts and is presented in a theatrical manner.[8]

Frank Rusagara of the Rwandan newspaper *The New Times* described rwandanicity as:

> An idea and philosophy that guided the people's conduct and perceptions. As an ideology, therefore, it is what the people of Rwanda understood themselves to be, what they knew about themselves, and how they defined and related to each other and their country as a united people (*Ubumwe*).[9]

Borrowing from J. L. Austin, the legal utterances staged within the Gacaca courts created a new national subjectivity. In this way, the inoculation and weekly ritual of Gacaca staged nationally has been a part of a national memory machine to produce Rwandanicity. As Judith Butler notes, drawing on Michel Foucault:

> Power works in part through discourse and works in part to produce and destabilise subjects. But then, when one starts to think carefully about how discourse might be said to produce a subject, it's clear that one's already talking about a certain figure or trope of production. It is at this point that it's useful to turn to the notion of performativity, and performative speech acts in particular—understood as those speech acts that bring into being that which they name.[10]

The pre-colonial past is the image or 'imagining' used to envision the future. Although an understandable pursuit in the wake of genocide, the use of culture to promote a legendary past is problematic because of historic power imbalances among Hutu, Tutsi and Twa. The reimagining itself is a rewriting of history and a reworking of culture to promote current political and social aims.

Performing justice and reconciliation – Art's sublimation (2005)

The following case study is an example of a gacaca court at the outset of the national implementation of gacaca in 2005. It presents

an illustration of how the arts were used to meet the stated aims of gacaca to address both justice and reconciliation. Underneath a giant umunyinya tree, in the middle of an open dirt expanse, the gacaca court in the Eastern Province of Rwanda began with a dance by the Abiyunze Association.[11] Gacaca (pronounced ga-cha-cha) is Kinyarwanda for 'grass' or 'lawn'. The gacaca court is based on a traditional indigenous, pre-colonial form of mediation in which opposed parties 'sit on the grass and resolve community conflicts' (Umucaca is a type of grass eaten by livestock). The blending of reconciliation and justice took place as the association – comprising 30 perpetrators, 40 survivors and 60 community members, approached the meeting space where testimonies of the genocide would be heard. The performance started with drumming and clapping, and two lead dancers stepping into the centre of the gathering, their arms weaving over and under one another's while footwork patterns (right foot, left foot, left foot, right foot) kicked up dust as they circled one another.[12] The male dancer was a perpetrator who had killed the woman's uncle during the 1994 Rwandan genocide, the female dancer was a survivor. The gacaca was about to begin.

A single bench and table were placed in front of the now seated local audience. Ceremoniously, nine judges walked in single file across the dirt expanse to the desk, wearing sashes of the Rwandan flag across their chests. The sashes had the label inyangamugayo (persons of integrity, elected by the local population) written across the blue, green and yellow national colours. The crowd stood for a moment of silence. The dance space became an area to commemorate space for the atrocities of the genocide. The president of the gacaca began to recite several articles including Organic Law Article 34 that states that the cases to be tried in the gacaca courts are solely related to genocide or the extermination of an ethnic group.[13]

Emmanuel, an accused génocidaire (perpetrator of genocide), turned to face the audience of over 600 persons. He testified to the crimes committed, including the murder of David Twamugabo.[14] The perpetrator introduced the story by recalling that the interahamwe[15]

was reluctant to go to the house of David, a giant man who was feared. When they first arrived, David stepped out of his house into the open air. Several members of the group attacked him, but were fought off. The group continued to attack him, throwing a grenade. The grenade did not explode. David picked up the grenade and warned them to leave or he would throw the grenade back at them, and he reentered his home. The interahamwe continued their attack from a distance, shooting arrows. Eventually, David was struck. The perpetrator recited the names of accomplices who first hit David with a hammer over his head, then struck his legs with a machete and, finally, sliced his throat with the machete. At this point in the confession, the perpetrator openly wept. The resident trauma counsellor made her way through the audience to offer him tissues. The audience simultaneously dried their eyes with shirtsleeves or collars. Following the gacaca, the grief counsellor stated that because the community participates in the gacaca and local association activities, people become comfortable round one another.

In this instance, justice and reconciliation are mutually supported through the integration of the arts with the local level gacaca courts – a model for transitional justice to encourage testimony related to atrocity by fostering trust and community building through the arts. However, the interplay between the arts for justice and reconciliation presents complex performances and performatives that are often contradictory. The use of performance in relation to justice includes the performativity of juridical systems themselves; this is particularly important in post-genocide Rwanda where the overarching justice project of gacaca frames any subsequent performances and utterances – one being intricately linked to the other.

The example illustrates an extraordinary link between how the arts were used for sensitization and mobilization for gacaca, but was not customary to the actual gacaca court proceedings in Rwanda. The reinvention of gacaca was promoted as a legacy of a pre-colonial utopian past. But Peter Uvin questions the role of gacaca as a traditional process: 'Why not assume that the "gacaca" appellation

is there just to lend a sense of history and legitimacy, an invention of tradition'.[16] Indeed, mass media – newspapers, radio – and theatre, in particular, had been widely used to sensitize, mobilize and educate the nation concerning gacaca procedures and goals. According to a report on gacaca issued by the Norwegian Helsinki Committee, '[t]he authorities use large public gatherings to inform and discuss various issues with the people, for example, the gacaca or the new constitution. In addition, information videos and even drama, theatre, art and comics have been used'.[17]

A gacaca play directed by Rwandan playwright Kalisa Rugano, funded by the Rwandan Ministry of Justice and Johns Hopkins University, was created for this purpose. The play evoked the past, performing the history of how gacaca was used in pre-colonial times, inscribed with legendary status. It was a communal mechanism that few remembered; it was therefore the retelling, similar to the use of legends, which sensitized the public to the role of the gacaca in pre-colonial Rwanda and in service of the vision of Rwandanicity in the present. In my interview with Rugano, on 11 July 2005 in Kigali, he mentioned that the play went on national tour in 1999–2001 to educate the population and help them rehearse for the upcoming implementation of the courts. The play illustrated the gacaca laws through a performance of what a gacaca would look like, including the roles of the inyangamugayo, the community as witnesses and the apology of the accused. According to an evaluation report of the play:

> Persons interviewed are strongly convinced that the theatre requests them to be ready to tell the truth when the proceedings begin (73%). Nearly the total persons questioned think that the theatre is not only for sensitisation, but also educative (88%). The presentation of the theatre will be necessary for transmitting a variety of messages susceptible to bring the population to massively and voluntarily support gacaca courts.[18]

The gacaca play toured 10 out of 12 provinces in Rwanda. The evaluative sample was conducted with 220 people: men (54 per cent),

women (46 per cent). The audiences primarily responded to the play by agreeing that the gacaca was created to address the rights of the victims and accused perpetrators by establishing the truth about the events of 1994, cell by cell. However, the production did not alleviate fears that those with incriminating information might be murdered or harassed, witnesses might refuse to testify or some people might not tell the truth. These anticipated problems were actually reinforced by the production. While the gacaca play was used for mass publicity, local associations also adopted theatre as a tool for mobilization and sensitization.[19]

Gacaca as *ikinimicu* (2010)

The next case study analyses court proceedings and varied narratives that emerged within the court session of Francois Mbarute to explore how gacaca served as a 'fictional frame' particularly towards the end of the gacaca process in 2010. Due to the social dynamics at play, court cases were increasingly identified by gacaca monitoring agencies as being manipulated following the speeding up of courts in 2007. Thus, it is important to identify at what point cases were filed and how varied social, political, and economic imperatives may have affected the lodging of case files and subsequent judgements. Through several interviews that I conducted with attendees and gacaca administrators, the case illustrates the multi-layered politics in Rwanda and how gacaca can be used for revenge and incrimination. According to a gacaca coordinator, witnesses were advised to not provide supporting testimonies for the accused, as they would often find themselves incriminated themselves or to have a case filed against them.

In this case, the concept of the 'fictional frame' is illustrated through the examination of discharging witnesses who were incriminated during the process of the trial. Thus, highlighting the fact that the defendant was already framed as guilty and anyone who might identify with him was likewise placed under suspicion as an accomplice. Here,

I also point out that Inyangamugayo were trained for 4 days in total to officiate court proceedings. Witnesses were often asked detailed questions by the Inyangamugayo (in random sequence) about time of day, timeline of activities, physicality of observations, and description of events. One observer who had attended each of the court trials of Mbarute stated: 'Think back to events sixteen years ago. Can you remember what happened with the detail in which the defendant and witnesses are being questioned? Then, listen to the accusers. They have their stories pre-scripted in full detail, including exact time of day. They are the ones who are lying. For those that can't quite remember, or may get some details wrong, those are the ones telling the truth.'[20] He stated that Mbarute had documents to fight his case, such as land dispute papers against one of the accusers, but that the Inyangamugayo would not acknowledge the documentation. Another gacaca researcher stated: 'During the last couple of years, gacaca has been used as a political device versus for justice.'[21]

The wife of Yusuf (someone killed during the genocide) stated the proceeding was like ikinimicu (Kinyarwanda term for theatre). Here, I provide a verbatim record of interactions between the Inyangamugayo, defendant and witnesses to further illustrate the function of gacaca as a 'fictional frame'. I attended the trial of Mbarute from 14 April 2014 to 16 April 2014. During the proceedings, I noted the dialogue, staging and interactions as if I were recording a staged script. The excerpts below come from these scripts.

President: Did you know the individuals whom *Mbarute* was charged with killing?

Witness One: No.

President: You made previous statements that *Mbarute* was amongst the gang that killed *Yusuf*. Why are you changing your statement?

Witness One: I didn't make that statement previously.

President: Who was training? Who was being trained?

Witness One: *Mbarute* notified me that they were planning to kill my wife, so I went past where they were conducting the training.

Mbarute was standing near the militia, but I cannot confirm that he was training with the militia.

President: Treat the courtroom as the trainees. How was *Mbarute* holding his body?

Witness One: The defendant was far away and I could not see any detail.

President: If you were able to see the accused, then you must have been standing on the side of the trainees and thus, *Mbarute* must have been facing the militia as a trainer.

Witness One: I am telling you what I know. I cannot lie.

Mbarute: The training was conducted in the valley, while I was a bystander. The person leading the training was a lieutenant.

In this exchange, the President frames Mbarute as a trainer for the militia. The testimony is questioned, although previous documents may have been falsely recorded. An attendee notes that several community members had made the claim that Mbarute used grenades and guns, to which Mbarute replied: 'This woman lies. For anyone who lives in the sector, they know her lies are commonplace.' The next witness provides a statement against the accused, that he had observed Mbarute at the Red Cross where Hutu and Tutsi were separated.

Witness Two: I witnessed the accused at the Red Cross register names.

President: Were the persons mixed whom registered?

Witness Two: They were mixed between Hutu and Tutsi. *Mbarute* registered their identity cards. He arrived in a white car, parked in front, and entered the Red Cross with another individual. *Mbarute* asked for identity cards.

Mbarute: I didn't enter the Red Cross. Why have you made that statement? (The witness does not respond).

Witness Two: He separated Hutu from Tutsi. He took these individuals by foot and they have never returned.

In this exchange, the case is made against Mbarute that he is working alongside the militia. Up to this point, there are no charges that actually

claim Mbarute has killed any individuals. Statements infer that Mbarute may have been linked to training militia or registering identity cards, but no statements related to actually validating that Mbarute killed. In fact, the original witness claimed that Mbarute warned him about the planned attack of his wife, thus using Mbarute's role to warn and potentially to protect. The next witness provided testimony on behalf of Mbarute. However, during the course of the proceeding, a case file is made against him.

President: *Mbarute* was amongst a group of militia that went to kill *Yusuf*. Did you know that?

Witness Three: No, I didn't know that.

President: How did you come to be in ownership of a gun, and how were the Tutsi who were in hiding with you killed and buried?

Witness: *Mbarute* had put me in charge of guarding the Tutsi, to protect them. We were discovered and the Tutsi were killed. I was not killed because I had an identity card that said I was Hutu and with the former political party. I was commanded to put down my gun and that is when the Tutsi were killed.

Speaker from the floor: How did you get the gun? Why did you let the others die if you were supposed to be protecting them?

President: Have you been put in prison for this?

At this point, Mbarute approaches the bench with a letter from the President of Gacaca from one of the previous courts who declares that the current witness is an Inyangamugayo, or person of integrity. The president puts the letter to one side and continues to interrogate the witness.

President: Why didn't you defend the Tutsi?

Speaker from the floor: The declaration of character from the previous court must be false, if the witness had a gun.

President: How did you get a gun?

Witness Three: I was a soldier.

Speaker from the floor: If he had a gun, then he is responsible for the killing.

President: Who asked you to surrender?

Witness Three: Those that came from the market. They had lots of guns.

Speaker from the floor: If the witness didn't protect the Tutsi who he was given by *Mbarute* to protect, then he must have killed them.

Mbarute: When I arrived, he was kneeling. I had come to protect, but they were dead.

Speaker from the floor: You must have killed together. Who did you kill with?

Witness Three: No one.

Speaker from the floor: Why didn't the previous court make a case against this man?

The proceedings continued to question how the gun was passed between Mbarute and the witness. During the progression of the trial, the witness was cross-examined and eventually declared as being a conspirator with the accused. Individual proclamations from the attendees questioned how the witness could have survived as 'one who is hunted' (Tutsi). The secretary read out the court transcript and then the witness was asked to sign. It was evident that no witness was safe from incrimination. Mbarute owned several properties that were to be auctioned off as reparation and distributed among those who filed against the accused. In this way, although the court might have looked like it was following court procedures, I would postulate that the final judgement of the case was predetermined. Thus, the courtroom itself was an example of ikinimicu. Article 95 of Organic Law No. 40/2000 originally protected bystanders who provided testimony of genocide crimes, '[t]estimony made on offences of the crime of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994 can never serve as a basis to take proceedings against its author charging him with the offence of failure to render assistance.'[22] However, Article 95 was deleted from the

subsequent Organic Law No. 16/2004, exposing bystanders who testify to potentially be charged as accomplices for not rendering assistance. Thus, the scripting of the court proceedings, both through the trial procedures and the testimonies given by defendants and witnesses, can be easily manipulated to either protect or frame individuals, depending on how narratives are crafted.

Conclusion

At the end of Rwanda's experiment, over a million Rwandans were accused of genocide, in over 12,000 community courts. What are the ramifications of *gacaca*, following *gacaca*? At the closing ceremony of *gacaca* in 2012, President Paul Kagame stated:

> Equally, the value and effectiveness of *gacaca* will be measured against the record of other courts, principally the International Criminal Tribunal for Rwanda (the ICTR). The ICTR has tried about sixty cases, cost 1.7 billion dollars and left justice wanting. Yet, at significantly less cost, the *gacaca* process has had the highest impact in terms of cases handled, and has delivered justice and reconciliation at a much higher scale.[23]

He further stated: 'It has been a period when we sought to reunite our nation, inspire confidence in the administration of justice and hold each other accountable for our actions.'[24]

Speeches often aim to legitimize policy (as evidenced by Kagame's closing ceremony speech). The proposed objectives of reconciliation and justice through the local-level courts were staged as a transitional justice model that originated from an indigenous mediation system, but may not have been administered or performed at a local level to achieve these objectives.

One of the main areas of tension relates to the traditional system of *gacaca* as a cultural form for *mediation* and the reinvented version of *gacaca* as a contemporary system for *justice*. Charles Villa-Vicencio

stresses the importance of pre-verbal and non-verbal healing, and relationship building elements of traditional African reconciliation practices:

> As a pretext for rational debate and conversation to take place as a way of dealing with the violence and trauma of the past through ceremony and ritual, perpetrators and victims are encouraged to make an attitudinal and behavioural shift from a prelinguistic state to the point where they can begin to articulate their experiences in words and ritual.[25]

Several grassroots associations that I observed used performance (particularly dance and music as noted in the first case study) in correlation with the *gacaca* courts. Those particular case studies demonstrated strong links between arts-based grassroots associations and participation in the *gacaca* courts. Perpetrators were initially released into community service, or through presidential decree. Survivors responded with fear at the prospect of meeting face to face the murderers of their families and neighbours. At the same time, perpetrators have often found their wives or husbands in new marriages and their homes occupied. Within this context of mutual distrust, associations created an alternative space for communities to interact and to establish relationships. Several associations have been created by survivors, perpetrators and community members as a vehicle to build trust and community connections between individuals who uniformly express fear, distrust and grief at the outset. In this way, expressing another kind of protection through a creative, relational, and psychological response to the social and communal damage caused by the genocide – through the arts.[26]

The role of juridical performances for protection has been examined through the *gacaca* courts to illustrate the nebulous balance between the use of the arts – to protect Tutsi cultural identity and to construct *gacaca* as a reimagined participatory mediation system to try crimes from the 1994 genocide against Tutsi. I have noted that the same artists who used the arts to militarize a return to Rwanda between 1959 and 1994 are

actively involved in the reimagining of the new Rwandan identity or Rwandanicity. In this way, artistic projects that reimagine citizenship and juridical subjectivity can be used for protection or conversely for the assertion of power – this agonistic relationship is intricately linked in the case of the *gacaca* courts in post-genocide Rwanda. The reinvention of *gacaca* for crimes solely related to the genocide against Tutsi may have altered traditional characteristics of *gacaca* to serve as protection versus mediation.